

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE ELECTRICITY ACT

- and -

IN THE MATTER OF a hearing concerning the Sale of Renewable Low-Impact Electricity generated within Nova Scotia by a Retail Seller to a Retail Customer pursuant to the *Electricity Act*

BEFORE:

Peter W. Gurnham, Q.C., Chair
Roland A. Deveau, Q.C., Vice-Chair
Kulvinder S. Dhillon, P. Eng., Member

ORDER

WHEREAS the *Electricity Reform Act*, S.N.S. 2013, c. 34, amended the *Electricity Act* to enable the purchase and sale of renewable low-impact electricity generated in Nova Scotia from licensed “Retail Suppliers” to “Retail Customers”, which are terms defined in the *Act*;

AND WHEREAS a draft Code of Conduct for Renewable Low-Impact Electricity Sales in Nova Scotia (“Code of Conduct”) was prepared by Board consultant, Energy Consultants International, Inc. (“ECI”);

AND WHEREAS a public hearing was held on Monday, January 18, 2016, and Tuesday, January 19, 2016, following a timeline to accommodate Information Requests and the filing of evidence by the Intervenor;

AND WHEREAS the Board issued its Decision [2016 NSUARB 33] which directed ECI to file a revised Code of Conduct to reflect the findings in the Board Decision, which ECI filed with the Board on April 29, 2016;

IT IS HEREBY ORDERED that:

1. The Board approves the Code of Conduct for Renewable Low-Impact Electricity Sales in Nova Scotia, and attached hereto as Schedule “A”, effective the date of this Order.

DATED at Halifax, Nova Scotia, this 10th day of June, 2016.

Clerk of the Board

NR

Schedule "A"

CODE OF CONDUCT

FOR RENEWABLE LOW-IMPACT ELECTRICITY SALES IN NOVA SCOTIA

Prepared by Energy Consultants International, Inc.

Brady Ryall, P.Eng.

TABLE OF CONTENTS

1.0	DEFINITIONS AND INTERPRETATION	3
2.0	LICENCE AND COMPLIANCE	6
3.0	AMENDMENTS AND EXEMPTIONS	6
4.0	FAIR MARKETING PRACTICES AND TELEPHONE SCRIPTS	6
5.0	BUSINESS CARDS AND IDENTIFICATION BADGES	8
6.0	TESTIMONIALS AND ENDORSEMENTS.....	9
7.0	SMALL-VOLUME CUSTOMER CONTRACTING REQUIREMENTS	10
8.0	TRAINING AND PRODUCT KNOWLEDGE	12
9.0	CUSTOMER INFORMATION	12
10.0	BILLING.....	13

PURPOSE AND SCOPE

This Code of Conduct for retail sales of renewable low-impact electricity sets out the minimum standards under which a Retail Supplier may sell or offer to sell Renewable Low-Impact Electricity to a Customer.

The purpose of this Code is to foster and uphold a sense of responsibility to the Customer and the general public by all those engaged in Marketing Renewable Low-Impact Electricity in Nova Scotia under the Electricity Act.

This Code applies to all practices used in the Marketing, sale, or offering for sale of renewable low-impact electricity to residential, commercial, and industrial Customers where such Marketing, sale, or offering for sale requires a licence issued by the Board. Where the standards differ amongst classes of Customers based on the amount of electricity used, it is noted.

This Code does not apply to the wholesale Marketing, sale, or offering for sale of renewable low-impact electricity to parties who are not retail customers of such electricity, including but not limited to parties served by electricity in a “Behind-the-Meter” arrangement.

This Code is to be interpreted and applied purposively, bearing in mind the varying degrees of knowledge, experience, training, education, age and particular ability of Customers.

1.0 DEFINITIONS AND INTERPRETATION

Definitions

1.1 The following definitions apply in this Code, unless stipulated otherwise.

“Account Holder”, in relation to a Premises, means the person listed on the account of NS Power for the delivery of electricity consumed at the Premises, regardless of whether the person is a Customer of a Licence Holder, in respect of the Premises.

“Act” means the Electricity Act.

“Behind-the-Meter” means the sale of electricity from a Renewable Low-Impact Electricity Generation Facility which is directly connected to a load without using NS Power’s transmission or distribution facilities, including NS Power’s meter installed at the Premises. For greater certainty, the electricity that is sold from a Renewable Low-Impact Electricity Generation Facility to a directly-connected party is Behind-the-Meter, while electricity that is sold from the same facility to another party through the use of NS Power’s transmission or distribution facilities is not Behind-the-Meter.

“Board” means Nova Scotia Utility and Review Board.

“Code” means the Code of Conduct for the sale of Renewable Low-Impact Electricity approved by the Board.

“Contract” means an agreement between a Customer and a Licence Holder for the supply of Renewable Low-Impact Electricity to a single or multiple Premises.

“Customer” means an Account Holder, other than an Account Holder served by a Behind-the-Meter installation, who consumes electricity on its Premises that the Account Holder did not generate and

- (a) with whom a Licence Holder has entered into a Contract; or
- (b) to whom a Licence Holder is Marketing.

“Day” means calendar day, unless otherwise specified.

“Direct Mail Transaction” means a paper-based transaction

- (a) initiated by a Licence Holder mailing or transmitting by facsimile documents to a Customer, which mailing or transmitting may be solicited or unsolicited by the Customer, or

- (b) initiated by a Customer obtaining the form of Contract using Electronic Communication but does not include the completion of the contracting process through Electronic Communication.

“Disclosure Statement” means the information document in the form approved from time to time by the Board pursuant to s. 51 of the Regulations.

“Door-to-Door Transaction” means a transaction initiated by the attendance of a Salesperson at the Premises of a Customer, whether or not this attendance was solicited or unsolicited by the Customer.

“Electronic Communication” means communication created, recorded, transmitted, or stored in digital form or in other intangible form by electronic, magnetic, or optical means or by any other means that has capabilities for creation, recording, transmission, or storage similar to those means. Electronic Communication is primarily conducted over the internet and includes e-mail correspondence.

“Licence” means a Retail Supplier licence issued by the Board to a person to sell Renewable Low-Impact Electricity.

“Licence Holder” means a person issued a Licence by the Board.

“Marketing” means any activity pertaining to the sale of Renewable Low-Impact Electricity for the purpose of soliciting or inducing a Customer to enter into a Contract with a Retail Supplier, including providing an offer for the Customer’s consideration, and includes in-person communication, direct mail communication, Electronic Communication, or telephone communication with Customers, advertising, and any other means by which a Retail Supplier or its Salespersons interact with a Customer for the purpose of solicitation.

“NS Power” means Nova Scotia Power, Inc.

“Premises” means the building or portion of a building that is provided with electricity through a single meter.

“Rate” means the amount of money on a ¢/kilowatt-hour basis, plus any fees or charges, to be paid by a Customer.

“Rate Comparison” means the electricity rate comparison information in the form approved from time to time by the Board pursuant to s. 52 of the Regulations that shows the Rate offered by the Retail Supplier, the current Rate charged by NS Power at the time of Marketing, and any other information that the Board may require.

“Regulations” means *Board Electricity Retailers Regulations (Nova Scotia)* enacted under the Act.

“Renewable Low-Impact Electricity” has the same meaning as in the Renewable Electricity Regulations.

“Retail Supplier” has the same meaning as under the Act.

“Salesperson” means a person who is employed by or otherwise conducts Marketing on behalf of a Licence Holder, or makes representations to a Customer on behalf of a Licence Holder, for the purpose of effecting sales of Renewable Low-Impact Electricity or entering into a Contract with a Customer.

“Small-Volume Customer” means a Customer that qualifies for the Domestic Service or Small General tariffs.

“Telemarketing” means Marketing conducted by a Licence Holder using the telephone, but excludes the initiation of a Direct Mail Transaction by a Customer using the telephone.

Interpretation

- 1.2** Where a word or phrase is defined in this Code or the Act, other parts of speech and grammatical forms of the word or phrase have a corresponding meaning.
- 1.3** A reference to the Act made in this Code includes any regulations made under the Act.
- 1.4** Headings are for convenience only and do not affect the interpretation of this Code.
- 1.5** Words importing the singular include the plural and vice versa. Words importing a gender include any gender.
- 1.6** Where there is a reference to a number of Days between two events in this Code, the Days shall be counted by excluding the Day the first event happens and including the Day the second event happens.
- 1.7** The words “include” or “including” are not used, nor are they to be interpreted, as words of limitation.
- 1.8** A provision in this Code with the heading “Reader’s Aid” is included for convenience of reference only and does not form part of this Code.

2.0 LICENCE AND COMPLIANCE

Licence

- 2.1** Every Retail Supplier operating in Nova Scotia must hold a valid Licence issued by the Board under section 3D of the Act.

Compliance

- 2.2** A Licence Holder must comply with all applicable provisions of the Act, the Regulations, its Licence, and this Code. Nothing in this Code affects the obligation of a Licence Holder or its Salespersons to comply with all applicable provincial and federal law.
- 2.3** A Licence Holder must ensure that its Salespersons adhere to the same standards required of the Licence Holder as set out in this Code.
- 2.4** The standards set out in this Code apply in addition to any other requirements imposed by Law.

Reader's Aid

For provisions that apply only in respect of Small-Volume Customers, see sections 4.1, 4.3, and 4.6; section 5.0; section 7.0; and section 8.0.

3.0 AMENDMENTS AND EXEMPTIONS

- 3.1** The Board may amend this Code from time to time.
- 3.2** The Board may grant an exemption from any provision of this Code. An exemption may be made in whole or in part, and may be subject to conditions or restrictions.

4.0 FAIR MARKETING PRACTICES AND TELEPHONE SCRIPTS

Fair Marketing Practices

- 4.1** When Marketing to a Small-Volume Customer, a Licence Holder must:
- (a) at the commencement of Marketing to the Customer:
 - i) give the name of the Licence Holder and the Salesperson to the Customer;

- ii) state that the Licence Holder is not associated with the Nova Scotia Utility and Review Board, the Government of Nova Scotia, or Nova Scotia Power;
- iii) if Marketing in a Door-to-Door Transaction:
 - a. provide a business card to the Customer that meets the requirements of this Code; and
 - b. display an identification badge that meets the requirements of this Code;
- (b) prior to a Contract being signed or agreed to by the Customer, state the Rate to be paid under any offer or proposed Contract for the supply of Renewable Low-Impact Electricity and the term of any proposed Contract;
- (c) at all times:
 - i) not exert undue pressure on the Customer;
 - ii) provide sufficient time for the Customer to read thoughtfully and without interruption or harassment all documents provided prior to entering into a Contract; and
 - iii) not use print that because of its size or other visual characteristics is likely to impair the legibility or clarity of documents provided to the Customer.

4.2 When Marketing to a Customer, a Licence Holder must, at all times:

- (a) provide only timely, accurate, verifiable, and truthful Rate Comparisons and services;
- (b) not mislead, provide untruthful or inaccurate information or otherwise create confusion in the mind of the Customer about the identity of the Licence Holder or its Salesperson, or use the trademarks or identification marks of Nova Scotia Power, the Board, or the Government of Nova Scotia;
- (c) not make any representation or statement, give any answer, or take any measure that is false or is likely to mislead the Customer;
- (d) not make any representations regarding Contracts, rights, or obligations unless those representations are contained in the Contract;

- (e) not make any offer or provide any promotional material to the Customer that is inconsistent with the Contract being offered to the Customer;
- (f) not induce the Customer to violate a Contract with another person; and
- (g) not exploit the age or lack of knowledge of Canada's official languages by the Customer or the Customer's apparent lack of understanding of an offer or other documents provided to the Customer.

4.3 A Licence Holder must provide a copy of the current version of the Guide – Purchasing Renewable Low-Impact Electricity in Nova Scotia to each Small-Volume Customer:

- (a) prior to the customer signing the contract for Door-to-Door Transactions;
- (b) by mail or Electronic Communication for Telemarketing transactions or Direct Mail Transactions; or
- (c) by providing a prominent internet link that is accessible by the Customer prior to completing the contracting process through Electronic Communication.

4.4 If a Licence Holder's advertising or Marketing materials contain representations about the nature, quality, and price or rate of NS Power's or any Licence Holder's service, or the market price of electricity, the Licence Holder must take reasonable and appropriate steps to ensure that such representations are timely, accurate, verifiable, and truthful.

4.5 A Licence Holder must not enter into a Contract with a Customer that is inconsistent with the offer made to the Customer leading to the Contract.

Telephone Scripts

4.6 Before using a telephone script or any amendment to a script used to verify Contracts as required by s. 57 of the Regulations, the Licence Holder must submit the script or amendment to the Board for approval.

5.0 BUSINESS CARDS AND IDENTIFICATION BADGES

5.1 A Licence Holder must ensure that every Salesperson acting on its behalf and who is Marketing to a Small-Volume Customer in a Door-to-Door Transaction provides the Small-Volume Customer with a business card that meets the requirements set out in s. 5.2 before making any representation to the Small-Volume Customer

about the Licence Holder's products, services, or business and before requesting any information about the Customer, including utility bills.

5.2 The business card must be clear and legible and include the following current information:

- (a) the name and address of the Licence Holder;
- (b) the name of the Salesperson acting on behalf of the Licence Holder;
- (c) the toll-free telephone number of the Licence Holder;
- (d) the Licence Holder's website; and
- (e) the e-mail address of the Licence Holder's customer service department.

5.3 A Licence Holder must ensure that every Salesperson acting on its behalf and who is Marketing to a Small-Volume Customer in a Door-to-Door Transaction at all times wears on the front of the Salesperson's outer clothing an identification badge that meets the requirements set out in s. 5.4.

5.4 The identification badge must be clear and legible and must meet the following requirements:

- (a) clearly identify that the Salesperson is acting on behalf of the Licence Holder;
- (b) include a photograph of the Salesperson's face that is no older than five years;
- (c) identify the Licence Holder; and
- (d) identify the name of the Salesperson and the title or position of the Salesperson.

5.5 All of the information set out in s. 5.4 must be shown on the same side of the identification badge and must at all times be facing the Customer.

6.0 TESTIMONIALS AND ENDORSEMENTS

6.1 A Salesperson must not refer to any testimonial, endorsement, or Customer experience that is:

- (a) not authorized in writing by the person quoted;

EFFECTIVE: JUNE 10, 2016

- (b) not truthful or not related to the experience of the person giving it;
- (c) obsolete or otherwise no longer applicable;
- (d) taken out of context; or
- (e) provided in any way likely to mislead the Customer.

6.2 For the purpose of ss. 6.1(c), a testimonial, endorsement, or customer experience is obsolete or otherwise no longer applicable if it is more than two years old.

7.0 SMALL-VOLUME CUSTOMER CONTRACTING REQUIREMENTS

7.1 Where a Small-Volume Customer enters into a Contract in a Door-to-Door Transaction, the Licence Holder must provide the following documents to the Customer during the Door-to-Door Transaction:

- (a) a signed copy of the Contract;
- (b) a signed copy of the Disclosure Statement;
- (c) Rate Comparison; and
- (d) the current version of the Guide – Purchasing Renewable Low-Impact Electricity in Nova Scotia.

7.2 Within 14 Days of a Small-Volume Customer entering into a Contract as a result of Telemarketing, the Licence Holder must provide the Customer with the following documents by mail, facsimile, or Electronic Communication:

- (a) a copy of the agreed-to Contract;
- (b) a copy of the confirmed Disclosure Statement;
- (c) a copy of the confirmed Rate Comparison; and
- (d) the current version of the Guide – Purchasing Renewable Low-Impact Electricity in Nova Scotia.

7.3 For a period of no less than 14 Days from the time when a Small-Volume Customer has entered into a Contract as a result of Electronic Communication, the Licence Holder must permit the Customer to save or print the following documents, as well as provide them to the Customer by Electronic Communication:

- (a) a copy of the agreed-to Contract;
- (b) a copy of the confirmed Disclosure Statement;
- (c) a copy of the confirmed Rate Comparison; and
- (d) the current version of the Guide – Purchasing Renewable Low-Impact Electricity in Nova Scotia.

7.4 If a contract is entered into by Electronic Communication, the Licence Holder shall ensure:

- (a) that its Electronic Communication, such as its internet website, is secure;
- (b) that its Electronic Communication process or server will cancel the Customer's session on the website in a reasonable period of time if the Customer does not continue the session;
- (c) that the Electronic Communication includes statements with boxes to be checked off by the Customer in order to proceed with the transaction,
 - i) that remind the Customer that entering and leaving his or her personal information on a public computer is not recommended,
 - ii) that confirm that the Customer understands that the Licence Holder does not represent NS Power, the Board, or the Government of Nova Scotia, and
 - iii) that confirm that the Customer is the Account Holder with respect to any Contract entered into through Electronic Communication;
- (d) that the Electronic Communication provides the terms and conditions of available Contracts, the Disclosure Statement and Rate Comparison applicable to each form of Contract, and a link to the Board's website, without requiring the Customer to commence a transaction;
- (e) that, as part of the transaction, the Customer is requested to review the applicable Disclosure Statement and Rate Comparison and indicate that he or she has read and understood these documents by checking a box;
- (f) that the Customer has the option to download or print each form of available Contract, Disclosure Statement, and Rate Comparison without any obligation to enter into a Contract;

- (g) that the signature page of the Contract contains the electronic signature of an authorized director or authorized officer of the Licence Holder and the date the Contract was entered into by Electronic Communication;
- (h) that below the signature contemplated in ss. (g), two boxes are displayed with a request that the Customer check only one, to either,
 - i) expressly accept the provisions of the Contract, or
 - ii) expressly decline the Contract and terminate the transaction without completing it; and
- (i) that, if the reader checked the box to accept the terms and conditions of the Contract, the Customer is required to provide his or her e-mail address in order to complete the transaction.

8.0 TRAINING AND PRODUCT KNOWLEDGE

- 8.1** A Licence Holder must ensure that the Licence Holder's Salespersons that engage in Marketing to Small-Volume Customers have sufficient knowledge and training to be able to comply with this Code, the Regulations, and all other applicable legislative requirements.
- 8.2** No Salesperson shall engage, and no Licence Holder shall allow a Salesperson of that Licence Holder to engage, in any Marketing to a Small-Volume Customer unless the Salesperson has completed the training described in s. 8.1.

9.0 CUSTOMER INFORMATION

- 9.1** A Licence Holder shall not disclose Customer Information to a third party, other than the Board, without the prior written consent of the Customer, except where the Customer Information is required to be disclosed for the following purposes:
 - (a) to complete a transfer request with NS Power;
 - (b) billing;
 - (c) law enforcement;
 - (d) complying with a statute or regulation, or an order of a court or tribunal, including the Board; or

(e) the processing of past due accounts of the Customer that have been provided to a debt collection agency.

9.2 Customer Information may be disclosed if it has been sufficiently aggregated such that individual Customer Information cannot reasonably be ascertained.

9.3 A Licence Holder shall not use Customer Information obtained for purposes of Marketing Renewable Low-Impact Electricity to the Customer for any other purpose without the Customer's prior written consent.

10.0 BILLING

10.1 Where a Licence Holder renders bills on behalf of NS Power, the Licence Holder may not mark-up, add to, aggregate, bundle, unbundle, or otherwise alter the Customer-specific Distribution Tariff line items and charges requested by NS Power.

10.2 Where NS Power renders bills on behalf of a Licence Holder, NS Power may not mark-up, add to, aggregate, bundle, unbundle, or otherwise alter the Customer-specific line items and charges requested by the Licence Holder.

10.3 Where a Licence Holder renders bills on behalf of NS Power, the Licence Holder shall identify on the bill that the Customer-specific Distribution Tariff line items and charges from NS Power are passed through from NS Power to the Customer without mark-up or profit to the Licence Holder's advantage.

10.4 Where NS Power renders bills on behalf of a Licence Holder, NS Power shall identify on the bill that the Customer-specific line items and charges from the Licence Holder are passed through from the Licence Holder to the Customer without mark-up or profit to NS Power's advantage.